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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~1085~~ 106

STATE OF MISSISSIPPI FOR THE USE AND BENEFIT OF J. E. SHOEMAKER, ADMINISTRATOR OF THE ESTATE OF RAY GRANT, DECEASED,

Petitioner,

versus

J. F. THAMES AND UNITED STATES FIDELITY & GUARANTY COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPELAS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

R. W. THOMPSON, JR.,
WEBB M. MIZE,
FRANK F. MIZE,
Counsel for Petitioner.

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No. _____

STATE OF MISSISSIPPI FOR THE USE AND BENEFIT OF J. E. SHOEMAKER, ADMINISTRATOR OF THE ESTATE OF RAY GRANT, DECEASED,

Petitioner,

versus

J. F. THAMES AND UNITED STATES FIDELITY & GUARANTY COMPANY,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

The petition of the State of Mississippi for the use and benefit of J. E. Shoemaker, Administrator of the Estate of Ray Grant, deceased, respectfully shows unto this Honorable Court:

A.

Summary Statement of Matter Involved.

J. E. Shoemaker, a resident citizen of the State of Louisiana was appointed Administrator of the Estate of Ray Grant, deceased, by the Chancery Court of Hinds County,

Mississippi, and was authorized by the said Mississippi Chancery Court to file a suit for wrongful death against J. F. Thames, the Superintendent of the Mississippi State Penitentiary, a citizen of Mississippi, and his surety on his official bond, the United States Fidelity & Guaranty Company, a Maryland Corporation, who had qualified to do business in Mississippi and who was doing business in Mississippi.

Suit was thereupon filed in the United States District Court for the Northern Division of the Southern District of Mississippi. Jurisdiction was based on amount involved (amount being in excess of $3,000) and on diversity of citizenship, the plaintiff being a resident citizen of the State of Louisiana, and the defendant, J. F. Thames, being a resident citizen of the State of Mississippi, the surety company being a corporation domiciled and existing under Maryland laws but qualified and doing business in Mississippi.

Motion to dismiss was made alleging that the heirs at law of Ray Grant, deceased, were citizens of Mississippi and that their citizenship and not the citizenship of the Administrator was controlling and that therefore there was no diversity of citizenship so as to give the United States Court jurisdiction. This motion to dismiss was overruled. The cause was tried and resulted in a judgment against the defendant in the sum of $20,000.00. Subsequently, the defendants made a motion to have the ver-

dict and judgment set aside and judgment entered for defendants notwithstanding verdict. The District Court overruled the motion and wrote a very able opinion. The case was then appealed to the United States Circuit Court of Appeals for the Fifth Circuit, where the cause was reversed and remanded by a divided court on jurisdictional grounds alone with directions to the District Court to dismiss the case.

B.

Reasons Relied On for Allowance of the Writ.

The reasons upon which a writ of certiorari should be granted are as follows:

1. The decision of the Circuit Court of Appeals in this cause is in direct conflict with decisions of the Supreme Court of the United States in the following cases:

Mecom, Adm., v. Fitzsimmons Drilling Co., 284 U. S. 183, 52 S. Ct. 84, 76 L. Ed. 233, 77 A. L. R. 904.

Mexican Central Ry. Co. v. Eckman, 187 U. S. 429, 23 S. Ct. 211, 47 L. Ed. 245.

Hess v. Reynolds, 113 U. S. 73, 58 S. Ct. 377, 28 L. Ed. 927.

City of New Orleans v. Whitney, 138 U. S. 595, 11 S. Ct. 428, 34 L. Ed. 1102.

Bullard v. City of Cisco, 290 U. S. 179, 78 L. Ed. 254.

Memphis State Railway Co. v. Moore, Adm., 243 U. S. 299, 37 S. Ct. 273, 61 L. Ed. 733.

Susquehanna & Wyoming Valley R. R. & Coal Co. v. Blatchford, 11 Wall. 172, 20 L. Ed. 179.

Continental Life Ins. Co. v. Rhoads, 119 U. S. 237, 7 S. Ct. 193, 30 L. Ed. 380.

Rice v. Houston, 13 Wall. 66, 20 L. Ed. 484.

Payne v. Hook, 19 L. Ed. 260.

2. The decision of the Circuit Court of Appeals in this cause is in direct conflict with the decisions of the Circuit Court of Appeals for the Third, Sixth and Eighth Circuits in the following cases:

City of Detroit v. Blanchfield, 13 Fed. (2nd) 13 (Sixth Circuit).

Chambers, et al. v. Anderson, 58 Fed. (2nd) 151 (Sixth Circuit).

Guarantee Trust Co. v. Collins, et al., 76 Fed. (2nd) 870 (Third Circuit).

Curb & Gutter District No. 37 of City of Fayetteville, Ark., et al. v. Parrish, 110 Fed. (2nd) 902 (Eighth Circuit).

3. The decision of the Circuit Court of Appeals in this cause ignores Rule 17 (a) of the Federal Rules of Civil Procedure.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directing the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 9632, "J. F. Thames v. State of Mississippi for the use and benefit of J. E. Shoemaker, Administrator of the Estate of Ray Grant, and United States Fidelity & Guaranty Company v. State of Mississippi for the use and benefit of J. E. Shoemaker, Administrator of the Estate of

Ray Grant", and that the judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Honorable Court and that the judgment of the District Court for the Southern District of Mississippi may be affirmed and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just; and your petitioner will ever pray.

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Gulfport, Mississippi;
FRANK F. MIZE,
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By_____